

DCP:MJB:dlm

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK,	:	NO. 1:CV-06-2348
Plaintiff	:	
	:	(Conner, J.)
v.	:	
	:	
HARLEY LAPPIN, et al.,	:	
Defendants	:	Filed Electronically

**BRIEF IN SUPPORT OF DEFENDANTS HARLEY G. LAPPIN,
D. SCOTT DODRILL, JOSEPH V. SMITH, AND KENNETH
GABRIELSON'S MOTION FOR LEAVE TO DEPOSE PLAINTIFF
PURSUANT TO FED. R. CIV. P. 30(a)(2)**

_____ Defendants Harley G. Lappin, D. Scott Dodrill, Joseph V. Smith, and Kenneth Gabrielson, respectfully submit this brief in support of its motion for leave to take Plaintiff David L. Womack's deposition pursuant to Fed. R. Civ. P. 30(a)(2). Because Plaintiff is confined in prison and there is a need for discovery, Defendants seek leave to depose Plaintiff.

I. Procedural History

Plaintiff David L. Womack is formerly an inmate incarcerated at the United

States Penitentiary, in Lewisburg, Pennsylvania (“USP Lewisburg”), and currently incarcerated in the state of New Jersey’s correctional system.

On December 7, 2006, Womack, through counsel, filed a Bivens¹ action alleging that employees of the Bureau of Prisons (“BOP”) improperly restrained him for twenty-six days. See Doc. 1.

On February 12, 2009, the Third Circuit Court of Appeals reversed this Court’s March 27, 2008 summary judgment order in favor of Defendants. See Doc. 54. On June 17, 2009, this Court issued an Order setting October 30, 2009, as the deadline for discovery in this case. See Doc. 65.

On June 22, 2009, Plaintiff filed a Second Amended Complaint. See Doc. 67.

In light of the need for discovery, Defendants have filed a motion seeking leave to depose Womack pursuant to Fed. R. Civ. P. 30(a)(2). This brief is submitted in support of that motion in accordance with M.D. Pa. Local Rule 7.5.

II. Factual Background

Womack claims that employees of the BOP improperly restrained him in a secured holding cell for a period of twenty-six days in violation of the Eighth

¹ Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

Amendment and international standards, and in violation of contemporary standards of decency. See Doc. No. 67.

III. Question Presented

Should this Court grant leave to Defendants to depose the inmate Plaintiff?

Suggested Answer: Affirmative

IV. Argument

This Court Should Grant Defendants Leave to Depose Plaintiff

Pursuant to Fed. R. Civ. P. 30(a)(2), “[a] party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison.” Id. Womack is confined in prison and, therefore, Defendants request the Court to grant it leave to depose Womack.

In that Womack is the Plaintiff in this case, he possesses relevant knowledge about the allegations in the Second Amended Complaint and the injuries and damages he claims to have suffered. By deposing Plaintiff, Defendants will be able to investigate Plaintiff’s numerous allegations.

Defendants’ deposition of Plaintiff will enable Defendants to appropriately prepare and address the issues and facts concisely and cogently. See Miller v.

Bluff, 131 F.R.D. 698, 700 (M.D.Pa. 1990)(concluding that “[t]he plaintiff himself started this lawsuit and any defendant surely is entitled to take his deposition in conjunction therewith”).

Accordingly, in order to prepare for trial, Defendants request leave to depose the inmate Plaintiff at a time convenient for all parties.

V. Conclusion

For the reasons stated above, Defendants Harley G. Lappin, D. Scott Dodrill, Joseph V. Smith, Kenneth Gabrielson request this Court to grant its motion to depose Plaintiff.

Respectfully submitted,

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Dated: August 6, 2009

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on August 6, 2009, she served a copy of the attached

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by electronic service pursuant to Local Rule 5.7 to the following individual:

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